



**City Manager's Office**

**MEMORANDUM**

---

**To:** **Mayor Ruzzin and Members of the City Council**

**From:** **Frank Bruno, City Manager**  
**Ariel Calonne, City Attorney**  
**Kevin Burke, Deputy City Manager**

**Date:** **December 14, 2006**

**Re:** **Performance Review of Tony Perri Contract**

As part of the original motion awarding the public access television contract to Tony Perri dba Boulder Production Company, Council directed that it would conduct a review of Mr. Perri's performance after six months, and depending upon performance, decide whether to grant \$10,000 in funding and/or continue the contract. This was done at the June 6, 2006 Council Meeting. The motion did not require a subsequent performance evaluation at year-end, however, both the contract itself and periodic discussions between staff and Council have indicated that a performance review of the second half of the year would be conducted. This performance review, along with public comments received by City staff over the last six months, public participation at Council meetings, and feedback by Council during budget discussions, will form the basis of new or modified contract language for 2007. If Council desires to call-up this issue for discussion, the December 19, 2006 Council Meeting under Matters from Members of Council would be an appropriate forum. Otherwise, the City Manager is prepared to renew this contract for one year with changes noted in this memo.

**Summary of Review**

Staff has determined that the majority of the contract conditions were met, although several important conditions were not. A complete evaluation of the contract terms can be found in Attachment A, "List of Compliance Tasks and Duties for Boulder Production Company." Of particular note is the body of original programming of community activities that regularly air on channel 54. This represents a significant restoration of local origination programming that has not been present in the community since the cutbacks at Channel 8. Mr. Perri has also been compliant with quarterly reports,

marketing and development, creating an upgraded and functioning facility, and maintaining equipment. There were significant areas that were not completed to staff's satisfaction including governance, training, public access and separation of revenues. More detail of these deficiencies and cures can be found below. The fundraising performance criteria was positive, but not in accordance with the contract provisions. This area, however, was effectively changed with the Council vote to fund public access television and Council appeared to waive the multi-year fundraising plan requirement with its June 6, 2006 action.

*Governance* – The contract is between the city of Boulder and Tony Perri dba Boulder Production Company. Boulder Production Company was not an incorporated company so the contract is with Mr. Perri as an individual. Section 3 of the contract directs Mr. Perri to “propose to the City a form of non-profit business organization sufficient to enable compliance with this agreement...” Mr. Perri orally informed staff that he was making progress on this effort throughout the year including the use of CATV and/or Boulder County Arts Alliance as the fiscal agent for BTV. In November, Mr. Perri informed staff that he had incorporated Boulder Television as a non-profit organization. Upon review, it was confirmed that BTV was incorporated on November 11, 2006; however, there were insufficient articles of incorporation and no bylaws on file with the Secretary of State nor any submitted to the City for review and compliance with the contract. Therefore, the required bylaw provisions directing “all meetings and records of the organization to be open to the public, including rights to attend meetings and to review records” have not been put in place. Nor has a formal board of directors been established.

*Training* - As part of the Business Plan developed by BTV, with staff support, in the first quarter of 2006, was a revenue strategy based upon training. Training and educational programs were anticipated to raise \$3,500 per month in operating revenue. Consequently, \$17,875 in PEG fees were spent on computers, software, an instructional monitor, tables and chairs to set up a training facility. To date, only two courses have been held—one in June and one in July. Each class had five attendees. No attendee was charged. Although middle school, high school and CU students have all made use of the facility, no other structured classes have occurred. During this review, Mr. Perri informed staff that he had formed a partnership with Boulder Digital Arts to recognize their training as certification for public access producers and volunteers to use BTV equipment. While marketing resources were not available to advertise these classes in 2006, staff expected a greater return on investment.

*Public Access* – Staff finds this performance criteria to have been met based upon the resources available but not compliant with the intent of the provision. BTV provided a “facility” as required by the contract. This facility had operating cameras and edit bays. BTV further provided staffing to assist with equipment check-out, use of edit-bays, and certification of skill set of those using the equipment on a limited basis. This use was primarily drop-in and was not overly successful as noted in the June 6 review. Consequently, Mr. Perri established specific office hours in the second half of the year. Those were Wednesday through Friday from 2:00 p.m. to 5:00 p.m. or by appointment.

In late summer, these office hours were posted on the website [www.btv54.com](http://www.btv54.com). However, upon checking the web site as part of this review, the office hour posting was no longer present.

Staff, Council and BTV have received numerous complaints regarding public access. Staff investigated nine of these complaints (not including those from Jann Scott). Of these complaints, none of the individuals had completed a producer's agreement. This is a pre-requisite as spelled out in the BTV Policies and Procedures to having something aired. Only two complainants were registered producers with CATV. Furthermore, none had submitted any material for airing outside of those embedded in Mr. Scott's submittals (of which all were aired prior to his suspension). Only one individual, Seth Brigham, attempted to access BTV during the advertised office hours. Unfortunately, Mr. Brigham disagreed with the number of volunteer hours required in order to use BTV equipment. At a later date, Mr. Brigham was suspended by Mr. Perri for violating the BTV Policies and Procedures. Section 3.11 of the contract notes:

"The City shall have no control over disciplinary actions taken by BPC against any producers or access users who violate BPC's policies or rules and regulations; nor shall the City interfere with any internal grievance procedure established by BPC."

Therefore, once a violation decision has been reached, staff has directed all complainants to exhaust the internal remedies. Once those are complete, complainants have the right to binding arbitration. If binding arbitration does not apply, then the City shall appoint a hearing officer. At this point, no complainant has exhausted the internal grievance procedure.

Aside from these complaints and the limited staffing available, there were a couple of public access programs generated: Cooking with Jenna and Out There.

*Separation of Revenues* – Section 17 of the contract (item 40 in the List of Tasks) prohibits the commingling of funds received from other sources with funds received from the city. Mr. Perri indicated that all revenues associated with BTV had been placed in a single account.

#### **Suggested Cures & Contract Amendments**

Below are actions or contract amendments that will address issues raised in the review as well as better align the contract with the proposal submitted by Mr. Perri for 2007 (Attachment B with the provision of an engineer stricken).

*Governance* – Staff will not renew the contract until a full Articles of Incorporation and Bylaws are in place for the non-profit Boulder Television. These documents provide some essential oversight, governance, and assurance of transparency necessary for any public entity. Mr. Perri submitted draft articles and bylaws on December 10, 2006. These need to be reviewed. Of key importance is the formalization of the current "Advisory Board" into a "Board of Directors" as well as other provisions of the contract.

*Training* - Training classes for camera operation, lighting, audio and editing will be available through Boulder Digital Arts (listed in their catalog as BDA/BTV classes) and through BTV which will offer less expensive (shorter) classes as needed, with a minimum of one camera and one editing class per month.

*Public Access* - While financial support of public access television in accordance with Mr. Perri's proposal for services at the \$150,000 level should remedy the staffing shortcomings of public access to equipment, further contractual obligations are prudent. As such, the contract will require equipment be made available for check-out and edit bays be available for use three days per week (as noted in proposal B). Mr. Perri is proposing the check-out times on those three days (Tuesday, Wednesday and Thursday) be from 1:00 – 6:00 p.m. for a total of 15 hours. Staff feels this does not meet the intent of "three days a week" and is requiring it either be all day Tuesday, Wednesday, and Thursday or 24 hours a week. Additionally, BTV is committing to maintaining office hours from 8 – 5 every day of the week to receive production submittals. Staff will also be requiring at least three cameras available for check-out exclusively to Qualified Persons and not for BTV productions. Lastly, the requirements for use of the equipment and or edit bays shall not be more than 2 volunteer hours per month or \$20 per month as determined by the BTV Board of Directors. All Qualified Persons shall have the same requirements to use said equipment. Use of the studio shall be by appointment and in increments of an hour. BTV Board of Directors shall have the right to require a BTV employee or employees to be present and to operate the equipment and to recover costs for such personnel. There shall be no charge beyond the 2 hours or \$20 per month fee for the actual studio, only the use of BTV personnel.

*Segregation of Revenues* - Mr. Perri has commenced actions to remedy this situation. A second BTV bank account will be established to house non-city revenues.

#### *Additional Provisions*

Disciplinary procedures – While BTV Policies and Procedures provide for due process related to a grievance or violation of a policy, it does not provide for specific timeframes for accomplishing these actions. Under the guise of "justice delayed is justice denied," a contract condition will be added that appeals be heard not more than thirty-one (31) days from the date a grievance or appeal is filed with the appellant entity within the BTV organization unless a later date is mutually agreed upon by the complainant and BTV.

Educational Channel – prior to the City Manager requesting Comcast to activate the educational access program, BTV shall provide to the City a proposed policy regarding access and eligibility to the airways and equipment. Additionally, there shall be established an Educational Access Programming Committee appointed by the Board of Directors in consultation with the Executive Director.

City Support – The city shall provide a total of \$150,000 in operating funds to Boulder Television in quarterly installments of \$37,500 to be paid within the first week of the quarter, unless the City Manager determines any provision of the contract has been violated. In which case, BTV shall have 30 days to cure to the satisfaction of the City Manager and at that time the distributions will resume. Furthermore, use of these funds shall be for the following purposes:

- Rent/lease payments for the facility
- Personal services for meeting the service requirements of the contract including engineering services;

- Utility expenses;
- Operating materials such as tapes, DVD's, graphics, music, set material and construction;
- Office expenses such as copies, paper products, light bulbs, etc.
- Training and education of qualified individuals and staff;
- Other expenditures as approved by the Board of Directors.

These funds are specifically prohibited from use for the purchase of:

- Alcohol;
- Vehicles (although mileage reimbursement is permitted);
- Grants to other individuals or organizations;
- Professional actors;
- Sponsorship of events;
- Corporate promotions productions;
- Out of state travel not approved by the Board of Directors in advance;

#### **Next Steps**

Unless called-up by Council at the December 19, 2006 meeting, the City Attorney will incorporate the above mentioned conditions along with any adjustments noted in Attachment A into a contract for renewal with Boulder Television (we will not be contracting with Tony Perri the individual) for the calendar year 2007.

#### **Attachments:**

Attachment A: List of Compliance Tasks and Duties for Boulder Production Company.”

Attachment B: Plan B Submitted by Mr. Perri prior to the November 14, 2006 Budget Meeting

Attachment C: BTV 4<sup>th</sup> Quarter Report

**List of Compliance Tasks and Dates**

For BOULDER PRODUCTION COMPANY  
 As stipulated in the December 30, 2005  
 PUBLIC ACCESS CABLE SERVICES AGREEMENT  
 WITH THE CITY OF BOULDER

Number	Due Date	Description of Task	12/06 Review Comment
1.	January 15, 2006	DEVELOP OPERATING POLICIES AND PROCEDURES	This task was completed January 16, 2006.
2.	January 15, 2006	DISCIPLINARY MATTERS	<p>BPC shall establish procedures for the fair consideration and settlement of grievances and disposition of disciplinary matters. Disputes that cannot be resolved by negotiation and mediation, and after exhaustion of all remedies and appeals provided by BPC's policies and procedures, shall be settled by mandatory binding arbitration. Agreement to such arbitration shall be a pre-condition to qualification as a Qualified Person to use the Facility. If, for any reason, a court of competent jurisdiction finds any agreement to binding arbitration unenforceable, then, and only then, such matter shall be heard and decided by a hearing officer designated by the City to render a quasi-judicial decision. Any decision rendered by a hearing officer designated by the City shall be appealable under Rule 106, CRCP. Agreement to the foregoing procedure, in case mandatory arbitration is found to be unenforceable, shall likewise be a pre-condition to qualification as a Qualified Person to use the Facility. Nothing in this section 3.1.5 shall preclude the City from declaring BPC in breach of the Agreement, should BPC exercise control over employees, producers, or programming decisions in such a way as to violate the letter or spirit of the Agreement.</p>
3.	March 31, 2006	FIRST QUARTER REPORT	Orally received March 28, 2006

Number	Due Date	Description of Task	12/06 Review Comment
4.	June 30, 2006	PERFORMANCE GOALS	A performance review was conducted in June and presented to Council who determined that performance goals were being met and \$10,000 in operating funds was awarded.
5.	June 30, 2006	TRAINING	<p>BPC shall offer instruction, training, and technical advice in video/television production techniques to all City residents and entities and persons and entities with a reasonable relationship to the Boulder community and students of local educational institutions which are qualified pursuant to the terms of paragraph 1.2 of the Agreement, including resident students of all ages (K-12 and university), and also to City employees.</p> <p>No training occurred prior to June 2006; however equipment (computers and software) was purchased and training developed by April 2006. Two editing classes were offered free of charge in the summer. One in June and one in July. Both had approximately 5 people in them. BTV also hosted a class of 6th Graders from Casey Middle School. The Youth Opportunities Advisory Board has also awarded BTV a grant of \$14,210 over two years to provide a film and video course for teens. Going forward BTV has affiliated with Boulder Digital Arts such that students who have passed their classes will be certified to use BTV equipment. Staff believes more training should be offered in 2007 considering \$17,875 in PEG fees were spent to develop a classroom. BTV agrees and is planning to offer a minimum of two classes per month.</p>
6.	June 30, 2006	FUNDRAISING, MARKETING, AND DEVELOPMENT  <b>Council Review Required</b>	<p>BPC shall demonstrate, to the sole satisfaction of the Boulder City Council, completion of each of the following tasks: 1) Plan, conduct and report the results of actual fundraising activities designed to provide for operating or capital equipment funding needs; 2) Develop and present a multi-year fundraising and development plan that demonstrates a feasible approach for securing and maintaining ongoing funding for operating and capital equipment needs, including outreach as provided in Section 1.8 of the Agreement. The Agreement shall terminate immediately, with no compensation whatsoever to BPC, upon a City Council determination that the requirements of this paragraph have not been met to the sole satisfaction of the City Council.</p> <p>Tony Perri presented his fundraising results both at the June 6 meeting and again as part of a WIP on October 12, 2006. Council appeared to be satisfied with this effort. In terms of a multi-year fundraising effort, none has been provided but no longer appears to be a requirement of council due to funding. Mr. Perri noted that he would continue to generate revenue to fill the gap between a \$225,000 operating budget and a \$150,000 subsidy. This revenue generation would primarily come from production services.</p>

Number	Due Date	Description of Task	12/06 Review Comment
7.	June 30, 2006  <b>Council Review Required</b>	<b>INTERNAL ORGANIZATION AND MANAGEMENT</b>  BPC shall propose to the City a form of non-profit business organization sufficient to enable compliance with the Agreement during the term of the Agreement and in the future (if the Agreement is extended or modified and extended). The organization shall be self-perpetuating, and shall provide the power for the City Council to appoint a non-voting member the board of directors or other governing body as a liaison. The organization shall promulgate bylaws which require City approval before amendment and which require all meetings and records of the organization to be open to the public, including rights to attend meetings, and to review records.	Identified in March Business Plan. Not Achieved as of 5-23-06. Not achieved as of 11-11-06. Mr. Perri incorporated a non-profit with the Colorado Secretary of State on 11-11-06. This incorporation paperwork did not have articles nor bylaws nor an appropriate distribution of assets plan upon dissolution. Draft articles and bylaws were submitted on December 10, 2006 and will be reviewed by staff prior to renewal of contract.
8.	June 30, 2006	<b>SECOND QUARTER REPORT</b>  BPC shall submit to City quarterly status reports detailing its progress under the Agreement, programming status, training activities, progress towards creation of a non-profit organization, and fundraising totals.	Was submitted for June 6 review and is part of that agenda packet.
9.	September 30, 2006	<b>THIRD QUARTER REPORT</b>  BPC shall submit to City quarterly status reports detailing its progress under the Agreement, programming status, training activities, progress towards creation of a non-profit organization, and fundraising totals.	Submitted as a WIP on October 12, 2006.
10.	December 31, 2006	<b>FOURTH QUARTER REPORT</b>  BPC shall submit to City quarterly status reports detailing its progress under the Agreement, programming status, training activities, progress towards creation of a non-profit organization, and fundraising totals.	Was submitted on December 13 <sup>th</sup> and included in December 14 <sup>th</sup> WIP.
11.	On going or by December 31, 2006	<b>INVENTORY</b>  BPC shall regularly conduct inventories of all equipment under its management and shall provide inventory reports to the City at least once each year. Such inventories shall include all City Assets and BPC Assets having an original cost basis of \$500.00 or more. Such inventories shall also distinguish between City Assets and BPC Assets, show the date of purchase of all Assets, and also indicate	Initial Inventory Completed by FAM during transfer from CATV. FAM is updating inventory of equipment purchased with PEG fees. FAM will provide an on-site audit of equipment.

Number	Due Date	Description of Task	12/06 Review Comment
		the use status of all Assets. Such inventories shall also indicate those City Assets and BPPC Assets that are obsolete or ready for disposal.	
12.	On going	<p><b>PERFORMANCE GOALS</b></p> <p>BPC shall provide that certain performance goals are achieved to the satisfaction of the City Council</p>	<p>Council determined performance goals were satisfied at the June 6, 2006 meeting. There are no specified performance goals beyond the ones itemized in this list for Manager review. A number of the specific performance goals of the Study Group could not be itemized in the contract due to prohibitions on government control.</p>

Number	Due Date	Description of Task 12/06 Review Comment
13.	OPERATE PUBLIC ACCESS CABLE CHANNELS	<p>BPC shall operate the public access cable channels for public and community access programming purposes. The primary purposes shall be to administer and coordinate access for all qualified persons and entities in the Boulder community and qualified persons and entities with a reasonable relationship to the Boulder community (hereinafter collectively, "Qualified Persons"), and to assist all such Qualified Persons who request such access to receive access on a non-discriminatory basis.</p> <p>In staff's opinion, the primary purpose of "administer and coordinate access for all qualified persons and entities" has not been fully achieved. To achieve this goal means having a facility that equipment can be checked out from, edit bays are set-up and available, and a studio is set-up and available. All of these items require renting a facility (which was done) and providing staff to make these available and answer questions (partially done). The facility does have a rent double that of the CATV facility at the Dairy but its costs were covered primarily by revenue generation and in part by the \$10,000 the city provided mid-year. So the infrastructure is in place. The necessary staffing was provided Wednesday's through Friday's from 2-5. Advertisement of this fact was posted on the web site in late summer, but had been removed at the time of this review.</p> <p>Also, Mr. Perri has communicated to city staff that access to equipment represents a very small portion of the business and that the primary service has been and will likely continue to be public access to airways by local producers, non-profits, and/or event organizers. That is, shows are produced outside the facility and the finished product is submitted to BTV for airing.</p> <p>Producing shows of local origin that are of value to the Boulder community has been a significant focus of BTV activities and a healthy library of programming is now developed.</p>

Number	Due Date	Description of Task
14.		<p><b>BROKER THE EDUCATIONAL ACCESS CHANNELS</b></p> <p>BPC shall broker the use of the educational access channels for educational programming purposes. The primary purpose shall be to administer and coordinate educational access on a non-discriminatory basis under eligibility criteria to be established and administered by BPC. Access shall be made available to all local educational institutions and non profit organizations with educational programs and/or missions including, without limitation, the University of Colorado, Front Range Community College, the Naropa Institute, and the Boulder Valley School District.</p> <p>A further decision for Council is to determine if they wish to impose an additional \$0.25 per month per subscriber PEG fee for this channel as allowed by the Franchise agreement.</p>
15.		<p><b>OPERATE A COMMUNITY ACCESS CENTER</b></p> <p>BPC shall manage a video production, cable broadcast, and electronic media facility, with related equipment (collectively "Facility"), making the Facility available for use by Qualified Persons at reasonable hours. Access to the BPC Facility shall be open to all Qualified Persons who qualify under BPC's eligibility requirements.</p>

Number	Due Date	Description of Task	12/06 Review Comment
16.		<b>PROVIDE EQUAL ACCESS</b> BPC shall provide access to the use of all BPC equipment, facilities, channels, and services on a non-discriminatory basis to all Qualified Persons. Access shall be made available for non-commercial programming purposes, whether individuals, groups, or organizations, on a first-come, first-served basis, pursuant to reasonable operating policies and procedures developed by BPC.	BTV has several policies that are intended to provide equal access: <ul style="list-style-type: none"> <li>- 1c: Airtime Priority</li> <li>- 1d: Program Airing</li> <li>- 1e: New Program Priority</li> <li>- 1g: Schedules Non-local Programs</li> <li>- 1h: Program Limits</li> <li>- 1j: Scheduling Requests</li> </ul> Staff discussed with Mr. Perri the elements of equal access. Collectively, it was agreed that equal access does not mean a qualified person may pick their time slots. Policy 1j notes that producers may request the day and time they wish their program to air, but the BTV Program Director will fill on a first-come first served basis following policy 1c. Mr. Perri further noted that BTV Productions are prioritized after programs locally produced by a qualified individual and which have not previously aired on Channel 54.
17.		<b>PROHIBITION OF CABLECASTING COMMERCIAL MATTER</b> Cablecasting “commercial matter” shall be prohibited. Commercial matter for these purposes shall mean time sold or used to propose a commercial transaction or for the express purpose of selling a commercial product or service.	BTV appears to be complying with this condition. Sponsors of programs are limited to credits at the beginning or end of a program. Profiles of new business openings have occurred. This can be somewhat blurry. The express purpose is not the selling of a commercial product or service, but certainly the publicity can have that affect. The purpose is to provide the Boulder community with exposure to the economic vitality and economic creation occurring in Boulder. Additionally, BTV is selling production services to commercial entities. While this is not prohibited, it is certainly a competitive advantage over private production houses.
18.		<b>COMPLIANCE WITH LAWS, RULES, AND REGULATIONS</b>	Staff is not aware of any violations of laws, rules or regulations including the franchise

Number	Due Date	Description of Task 12/06 Review Comment
		BPC shall administer the public and educational access channels and facilities in compliance with applicable laws, rules, regulations, and in compliance with the permits and franchise agreements between the City and the Cable Operators.
19.	OUTREACH	<p>BPC shall actively conduct and document outreach activities to engage individuals, non-profit organizations, and communities of interest (for instance ethnic, racial, faith, and neighborhood organizations) in the use of the Facility and the available equipment. This engagement includes, without limitation, exposing the potential of public access as a means of expression and communications to the governing boards, staffs, and volunteers of such organizations, and facilitating production of programming for such organizations.</p>
20.	OUTREACH	<p>BPC will use its best efforts to address the broad spectrum of needs of the Boulder community through programming. Through local educational institutions, BPC shall endeavor to achieve the same level of programming on the educational access channels.</p>
21.	PLAYBACK/CABLECAST	<p>BPC shall provide for the playback/cablecasting of programs on the public access channels. Programming shall be provided seven days a week for at least six hours per day, unless prevented by <i>force majeure</i> including, without limitation, acts of God, war, strikes, civil unrest, natural disasters, and technical problems beyond the reasonable control of BPC.</p>

Number	Due Date	Description of Task 12/06 Review Comment
22.	MAINTENANCE OF EQUIPMENT	<p>BTV has done a very solid job of maintaining and repairing equipment. As part of the year-end inventory, BTV will be turning over equipment to FAM that is out-dated or non-serviceable.</p> <p>Of particular note to this category is the expenditure of PEG fees on a wireless network connection between BTV facility at Pearl Street and the head-end at Channel 8. This was done at half the cost Comcast quoted for installing fiber to Pearl Street and provides mobility if the public access contract is awarded to another entity who leases a different facility or if BTV ever moves. IT staff is maintaining and supporting this wireless network.</p>
23.	SPECIAL NEEDS	<p>No requests at this point.</p>
24.	PROMOTION	<p>Many BTV promotions on BTV. Have acquired access to TV Guide. Taken advantage of press coverage and created some media events.</p>
25.	OTHER ACTIVITIES	<p>N/A</p>

Number	Due Date	Description of Task	12/06 Review Comment
26.	CHANNELS OPEN TO THE PUBLIC	<p>BPC agrees to keep the access channels open to all Qualified Persons regardless of their viewpoint, subject to FCC regulations and other relevant laws.</p>	<p>Many accusations that this is not being accomplished. To date, staff does not believe any of the complaints about access have been based upon the viewpoint expressed in their productions. Two producers have been suspended by Mr. Perri in accordance with BTV Policies and Procedures. Both dispute this was a proper suspension, but neither have exhausted the administrative remedies afforded them under the BTV Policies and Procedures. Other complainants allege failure to air their programs, but none have filled out a producer's agreement nor submitted material for airing in accordance with policies and procedures.</p>
27.	FIRST AMENDMENT PUBLIC FORUM	<p>BPC acknowledges that it does not intend, by virtue of the Agreement, or otherwise, to create any First Amendment public forum whatsoever, despite those terms of the Agreement relating to access to the BPC Facility by eligible members of the public and the ability of any eligible Qualified Person to use the BPC Facility for expression free from censorship by BPC. BPC agrees that such provisions are designed to create, by contract, terms of access for eligible BPC Facility users only, and not to create any public forum whatsoever or any third party right to such forum.</p>	<p>N/A</p>
28.	PERFORMANCE REVIEW	<p>BPC shall have the right to cure any identified performance problem within the thirty (30) day notice period.</p>	<p>BTV will be afforded this opportunity upon completion and transmittal of this review.</p>

Number	Due Date	Description of Task
29.		<p><b>COPYRIGHT CLEARANCES</b></p> <p>Before cablecasting material submitted by Facility users, BPC shall require users to warrant, in writing, that they have obtained all necessary ownership rights, clearances, and licenses, and made all other necessary arrangements with every interested party (whether broadcast stations, networks, sponsors, music licensing organizations, copyright holders, and, without limitation, any and all other persons necessary for lawful transmission of submitted material). BPC shall keep copies of these agreements for City inspection upon request.</p>
30.		<p><b>DISTRIBUTION RIGHTS</b></p> <p>BPC shall require that all programs produced with funds, equipment, facilities, or staff obtained under the Agreement shall be distributed on those channels allocated to it. This shall not be interpreted to restrict other distribution to other networks or channels so long as all further distributions are consistent with all applicable laws as well as BPC's rules, policies and procedures, a current version of which shall at all times be kept on file with the City.</p>
31.		<p><b>WAIVER</b></p> <p>Each day that video programming is cablecast on BPC's channels, BPC shall periodically display text stating that the opinions and content expressed in the displayed programming are the sole responsibility of the program producers, and do not represent the opinion of BPC or the City of Boulder.</p>
32.		<p><b>EQUIPMENT AND FACILITIES</b></p> <p>BPC shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under the Agreement or purchased with funds provided pursuant to the Agreement. BPC shall implement policies designed to protect City Assets and BPC Assets alike.</p>

Number	Due Date	Description of Task	12/06 Review Comment
33.	INVENTORY	<p>City Assets identified as obsolete or ready for disposal shall be disposed of regularly and in a manner approved by the City on a case-by-case basis. Upon completion of any such disposal, BPC shall promptly provide an accounting of the disposal transaction to the City.</p>	<p>All disposals of city assets are to be done by or with permission of the City. To date, BTV is in compliance. During the review period, there was a theft of two camera's that are considered city assets. This theft was not reported to the City for 9 days and after a story had run in the Daily Camera. Mr. Perri was advised that this was not adequate notification. He has since advised the insurance company and been informed that the loss is covered with a \$500 deductible. The City is awaiting a call from the insurance adjuster.</p>
34.	PERFECTING SECURITY INTEREST	<p>To secure its obligations under the Agreement, BPC grants City a security interest in all of the assets and interests owned or hereafter acquired by BPC with funds provided by the City, and the proceeds thereof, including but not limited to, BPC deposit accounts and inventory and all equipment and fixtures, that are or were acquired with funds provided by the City. BPC agrees to take all steps reasonably requested by the City to perfect and enforce the City's security interest, including the execution and processing of financing statements and continuation statements under the Uniform Commercial Code. BPC will also notify any institution with whom it now or hereafter maintains any deposit account of the existence of the City's security interest in the account.</p>	<p>N/A</p>
35.	DISSOLUTION	<p>Upon dissolution, BPC shall, subject to City approval, transfer all City assets and facilities to the City, or at City's option, to any other organization or organizations designated by City in accordance with law.</p>	<p>This provision of the contract is not in compliance. The incorporation documents of November 11, 2006 stated that assets would be equally divided between the City and BTV. Mr. Perri has submitted new Articles of Incorporation that address this issue.</p>

Number	Due Date	Description of Task 12/06 Review Comment
36.	INSURANCE	<p>During the term of the Agreement, BPC shall obtain and maintain comprehensive general liability insurance with limits of at least \$150,000 per person and \$600,000 per occurrence; and, upon creation of a non-profit business organization, officers and directors liability insurance with limits of at least \$1 million per claim and \$2 million in the aggregate. BPC shall also maintain worker's compensation insurance as required by law. BPC and/or the City may elect to purchase any other additional insurance coverage as they may deem appropriate. The City shall be named as an additional insured on the comprehensive general liability insurance. The City shall receive certificates of insurance for all insurance required under the Agreement whenever new certificates are issued, and may otherwise inspect certificates and other proofs of insurance upon reasonable notice to BPC. BPC shall give at least thirty (30) days notice to the City before any policy is canceled or permitted to lapse.</p>
37.	NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE	<p>BPC shall not discriminate against any person, employee, or applicant for employment, or against any contractor, on the basis of race, color, creed, religion, sex, sexual preference, gender variance, marital status, economic status, ancestry, national origin or physical or mental handicap. BPC shall not discriminate in delivering services on the basis of race, color, creed, religion, sex, sexual preference, gender variance, marital status, economic status, ancestry, national origin, or physical or mental handicap.</p>
38.	PROGRAMMING DECISIONS	<p>BPC will otherwise exercise full unfettered discretion in programming matters to comply with all federal, state, and local laws, which discretion may include the scheduling of material containing obscene content, or indecency, or nudity, at cablecast times consistent with industry practice.</p>

Number	Due Date	Description of Task 12/06 Review Comment
39.		<p><b>RECORDS AND FINANCIAL AUDIT</b></p> <p>BPC's financial statements for the contract period shall be audited by an independent, certified public accountant, accounting for all funds received and expended. The audit report shall be submitted to the City within one week of completion. BPC shall maintain all necessary books and records, in accordance with generally accepted accounting principles. Upon reasonable request from the City, BPC shall, at any time during normal business hours, make available all of its records with respect to all matters covered by the Agreement. Such request shall be delivered, in writing, to the Facility, and to the attention of BPC. BPC shall respond within five (5) business days and within such time make available all such requested records for inspection and copying.</p> <p>The City has requested from BTV a Letter from an accountant as to the financial statements during the contract period. Given that all PEG money is being reviewed by City staff and the small operating contribution made mid-year, a full audit is not expected for 2006, but will be in 2007.</p>
40.		<p><b>FUNDING FROM OTHER SOURCES</b></p> <p>BPC shall seek such other sources through fund-raising activities. BPC shall separately account for and not commingle with any other account those funds received from other sources for the purposes of performing its duties under the Agreement.</p>
41.		<p><b>TRANSFER OF ASSETS</b></p> <p>Upon termination or failure to renew upon expiration of the Agreement, BPC shall within thirty (30) days transfer to City all equipment, real property, fixtures, contracts, leases, deposit accounts, or other assets received by or purchased by BPC with City funds received pursuant to the Agreement. Any BPC property subject to a security interest held by City shall also be transferred to the City. BPC shall execute all appropriate deeds, bills of sale, and other instruments necessary to transfer title.</p> <p>N/A</p>

## **Plan B: \$150,000 for the operation and facilitation of Channel 54 and Channel 22**

The funding amount under **Plan B** for the operation and facilitation of two PEG channels, is approximately **\$75,000 less** than what the city currently pays for Channel 8.

*~~Under this plan, the City of Boulder will need to provide a full-time broadcast engineer for the daily maintenance, operation and facilitation of all city-owned equipment.~~*

The funds from **Plan B** will be used primarily to pay for the public access and education channel offices and studio lease payments, as well as the daily challenges of operating two TV stations, which includes the implementation of the daily programming schedules.

The remaining **Plan B** funds will go toward the administration, operation and programming of the public access channel, the education channel and these community access services:

1. Public access to cameras and editing equipment three days a week.
2. Limited public use of the TV studios.
3. Administration and the airing of local community access programming.
4. Operations and programming of Channel 54 for 12-hours a day.
5. Operations and programming of Channel 22 for 8-hours a day.

**Plan B** funding will limit the amount of local and original programming for the education channel, including the free home tutoring classes and Boulder-based educational and workshop programs.

**Plan B** will require that Boulder Television produce private and commercial productions, on a full time basis, to help fund the production of community related programming.

These self-generated funds may help, but are not guaranteed, to pay for the production of the following community programming:

1. Community festivals and events.
2. Non-profit and service organization videos.
3. New business grand openings.
4. Some city council study sessions.
5. Some sporting events.

# Boulder Television 1<sup>st</sup> Annual Report - 2006

## Public Access

### **Access to the Channel 54 Airwaves**

Since January 1, 2006, BTV has opened its doors to any Boulder resident who wished to provide pre-produced local programming for airing on Channel 54.

More than twenty people have taken advantage of the opportunity to place their TV shows on the air. Most people have either dropped off or mailed a completed TV show on DVD or digital videotape (DV) to the program department at BTV.

Pre-produced public access TV shows air on Channel 54 every day and in many instances, air two or three times a day. A typical locally produced TV show will air twice a day for thirty days or longer.

### **Camera and Edit Suite Use**

While there were no set hours (most of the year) for public access of cameras and edit suites, BTV did provide cameras and editing equipment to Boulder residents free of charge, and on an "as-needed" basis.

Typically, a resident would venture down to BTV, tell the program department about an event or new show they would like to videotape, produce, edit and get aired on Channel 54. On nearly every occasion, the resident would be awarded a camera for a single day, or in weekend cases, three days use. After videotaping, the resident would take their tapes home or come back to BTV for free use of a BTV edit suite.

The finished TV show would air on Channel 54, at least twice a day for at least a month.

At no time were BTV cameras, edit bays or airtime sold or rented.

### **Community Programs**

Volunteer producers at BTV routinely provided video production services for every major festival, business and sporting event in Boulder in 2006.

Every event was videotaped, edited and placed on Channel 54 without funding from the event organizers.

BTV producers provided their time and energy, free of charge, and on a consistent basis throughout 2006, for the purpose of giving Boulder residents a timely video account of local events on Channel 54.

## **Volunteers**

### **BTV Staff**

In 2006, the BTV staff was made up entirely of volunteers. The station manager/executive director, program director, producers and broadcast engineer all provided their time, energy and services free of charge. On occasion, the engineer would receive funds for contracted services through the installation of new equipment.

### **Resident Volunteers**

At a frequency of approximately two people per week, residents would call or come to the BTV studios and offer their time and expertise free of charge.

Typically, volunteers would only stay for a few days or weeks before moving on to a paying job or something else. Occasionally a volunteer would come in on a regular schedule and make contributions to the station. This was the exception, not the rule.

This is indicative of many volunteer scenarios and is the reason BTV will now work with Volunteer Connection to screen prospective volunteers in 2007. This organization also screens BTV for the volunteers.

### **Interns and Work Study Students**

Through the University of Colorado, BTV has brought educational institutions back into the public access fold.

On average, there were approximately four different interns or work-study students working at BTV every month. Many of these people would work throughout the entire semester at BTV.

This is a valuable resource for public access and will continue to build through 2007.

## **Partnerships and Alliances**

### **Business**

BTV has developed working partnerships with a number of Boulder-based businesses in 2006. Some of these businesses have become BTV program sponsors. Others have donated time and/or money, while several other businesses have "adopted" a nonprofit organization in which to provide funds for the production of a BTV program featuring the nonprofit group.

## **Education**

In 2006, BTV worked closely with the School of Journalism and Mass Communication at the University of Colorado – Boulder. Other education affiliations include Boulder High School and Casey Middle School.

Education affiliations include the airing of school-produced programs on Channel 54 as well as training sessions and class field trips to the BTV studios.

## **Nonprofit Access**

BTV has provided a broadcast venue for more than a dozen local nonprofit organizations in 2006. These groups would either have a video produced for them by the producers at BTV at little no cost, or would supply BTV with a completed video for airing on Channel 54. Nonprofit corporations routinely provided BTV with programming in 2006.

## **Training**

### **Training Classes**

While there were limited formal training classes at BTV in 2006 due to a lack of marketing funds, more than twenty people have learned various aspects of television production through the professional producers volunteering at BTV.

In the normal course of the day at BTV, there would always be some type of instruction and training happening. From interns learning to edit to volunteers learning the art of working a camera, Boulder residents would find a comfortable atmosphere in which to learn many aspects of the television business.

## **Broadcast Engineering**

### **Volunteer Engineer**

In 2006 BTV was required to use the services of a volunteer broadcast engineer. This posed several problems at the station yet BTV remained on the air, 24-hours-a-day, 98% of the year.

There were several occasions when the station would be off the air due to technical difficulties. While these instances were limited to only a few hours, or at the very most, a few days, not having an on-call paid engineer proved to be a challenge.

## **Equipment**

### **CATV Equipment**

BTV inherited more than a thousand different pieces of equipment from CATV. Some of the old CATV equipment was stored with the City of Boulder. Other pieces of equipment were left behind at the CATV studios and offices located at the Dairy Center for the Arts in Boulder.

Approximately 95% of the CATV equipment is outdated and approximately 80% of it is broken or unusable. BTV made the best possible use out of the old CATV gear and worked with a volunteer broadcast engineer to fix some of the equipment for public access use.

### **BTV Equipment**

From the very first infusion of equipment fund money from the City of Boulder, BTV has purchased broadcast TV equipment, which will stand the test of time and the repeated use by the public.

In 2006, BTV and the City of Boulder made giant strides into the digital video market and in turn have provided the community with easy-to-use training computers, editing and camera equipment.

All equipment purchased with city funds was approved and reconciled prior to the purchase of additional equipment.

## **Internet**

### **Website**

Due to a lack of funding, BTV was only able to create a limited website. The personnel, equipment and time needed to create and maintain a website was not available in 2006.

## **Administration and Operations**

### **Offices and Studios**

The BTV offices and studios are located at 1426 Pearl Street, Suites 10, 12, 18 and 20, in Boulder, Colorado. The yearly lease for these offices and studios, which totals approximately 5,000 square feet, was, in part, donated to BTV for its full and exclusive use throughout 2006.

Without the donation of office and studio space, BTV would not have been able to conduct the business of community access television services in Boulder, nor provide programming of any kind on Channel 54 in 2006.

### **Utilities, Phone Service, Cell Phones, Auto and Travel Expenses, Office Supplies, Production Supplies and All Other Administration and Operation Expenses**

Most of the funds needed to pay for the above services, products and expenses were donated to BTV. Without these donations, BTV would not have been able to provide community access television services to the public, nor would it have been possible for BTV to program, administer and operate Channel 54 in 2006.

## **Nonprofit Status, Articles of Incorporation and Bylaws**

### **Nonprofit Status**

In 2006, Boulder Television filed with the State of Colorado as a nonprofit corporation. In early 2006, BTV formed an Advisory Board, which included a liaison from the Boulder city council, to assist the Executive Director in planning, programming and procedural issues.

### **Articles of Incorporation and Bylaws**

Articles of Incorporation and Bylaws were created in late 2006 in preparation for a new contract with the City of Boulder for 2007. This includes the formation of a new, formal Board of Directors, including a city council liaison.

## **Public Access Challenges**

In 2006, one person was banned from Boulder Television for making physical threats to several BTV volunteers and TV show hosts. This person also abused the right to access the free airwaves provided to citizens. This individual refused to meet with the BTV Advisory Board on three separate occasions for a hearing.

Another individual was asked to leave the BTV studios after demonstrating disruptive behavior. There is another hearing set on December 13, 2006 for both people.

## **Production Services and Finances**

### **Production Services**

While most of the operating and administrative expenses were met through donations and grants, BTV production services provided some additional revenue to help meet those expenses, after the production services costs were paid.

BTV provided low cost production services to local businesses, nonprofits and educational institutions. Some of these productions aired on Channel 54 as public access programming. Other productions were used by clients for promotional or commercial purposes, and not aired on Channel 54.

All of the net profits obtained through BTV production services were put directly back into Boulder Television and toward the administration and operational costs of running the station, providing public access services and programming the station.

### **Finances**

In July 2006, BTV was provided with \$10,000 from the City of Boulder for administration and operation expenses. These funds went directly to 2 months of office and studio lease payments, and to approximately 40 days of contracted services that helped administer community access services such as camera and edit suite check-out, as well as the encoding and programming of "dropped-off" locally produced TV shows.

For the remaining months of the year BTV sustained its operations through private donations, grants and the net profits from low cost production services.

With each BTV private or public production service rendered, all net profits were put toward the operation and administration costs of community access television.

The next page contains the administrative and operation expenses, as well as the income sources for BTV in 2006.

*Please Note: During the last three months of 2006, BTV was not able to generate as much private production service work as anticipated, and reported to the city council, due to the publicity associated with the false allegations, harassments and rants from a former community access TV producer, as well the associated newspaper articles on the subject.*

*In addition, this former producer continually attempted to associate himself with BTV, and consequently jeopardized future business contacts and associations.*

## **2006 Gross Income**

<b>1. Production Services</b>	\$61,109.00
<b>2. Public Grants</b>	\$7,750.00
<b>3. Private Donations</b>	\$45,158.39
<b>4. City of Boulder</b>	\$10,000.00

**Total Gross Income:**      **\$124,017.39**

## **2006 Expenses**

<b>1. Office &amp; Studio Lease</b>	\$41,088.00
<b>2. Phone Service</b>	\$1,177.54
<b>3. Cell Phone Service</b>	\$2,669.27
<b>4. Internet Service</b>	\$516.85
<b>5. Auto Lease</b>	\$7,213.14
<b>6. Auto Fuel</b>	\$1,138.33
<b>7. Auto Insurance</b>	\$1,440.32
<b>8. Equipment Insurance</b>	\$654.25
<b>9. Utilities</b>	\$3,589.98
<b>10. Office Supplies</b>	\$2,108.12
<b>11. Office Services</b>	\$3,528.12
<b>12. Production Supplies</b>	\$9,573.00
<b>13. Contracted Services</b>	\$31,068.46
<b>14. Engineering Services</b>	\$5,880.64
<b>15. Bank Fees</b>	\$492.48
<b>16. Marketing</b>	\$3,235.03
<b>17. Cable Services</b>	\$2,038.13
<b>18. Volunteer Incentives</b>	\$4,882.50
<b>19. Shipping</b>	\$1,723.23

**Total Expenses:**      **\$124,017.39**

## **2006 Equipment:**

*Please note: All equipment purchased with funds from the City of Boulder in 2006 was itemized, approved and reconciled with the City Manager's Office before and after the purchases. Those equipment purchases and the funds provided by the City for said equipment purchases are not listed above.*

\$12,259.37 is the start balance in the BTV/City bank account, which represents the remaining amount of available equipment peg fees from 2006.